

REMARKS

In response to the species election requirement, Applicant hereby elects (without traverse) Species 2.

Claims 1; 17; 18; 20; 21; 22; 23; 28; 30 to 46 have been canceled as directed to the non-elected Species 1.

Applicant further elects, in order to simplify and advance prosecution, (i) the tongue as the site of implantation for the structure; (ii) the structure including shape memory material that assumes a desired mechanical condition in response to an activation force; and (iii) the structure serving to “fixate” tissue along the pharyngeal conduit.

Claim 2 has been amended to define these features. Claims 10 and 13 have been cancelled, as having been incorporated into amended claim 2. Claims 4; 5; 6; 7; 8; and 9 have also been cancelled, in view of the inclusion of shape memory material in amended claim 2.

Accordingly, claims 24 and 25 have been amended to be solely dependent upon claim 2, as amended. Claim 29 has also been amended to reflect the amendment scope of claim 2.

Claims 11 and 12 have been amended to be solely dependent upon amended claim 2 and withdrawn as amended, subject to reinstatement upon allowance of claim 2, which is believed to be generic to the subspecies defined in amended claims 11 and 12.

Applicant further elects (without traverse) the subspecies for the shape memory material defined in original claim 3 (as dependent upon claim 2) as comprising a metal material. This elected subspecies is defined in new claim 47. Applicant has amended original claim 3 to be dependent solely upon amended claim 2 and to define the non-elected subspecies. Claim 3 has withdrawn subject to reinstatement upon allowance of claim 2, which is believed to be generic to the non-elected subspecies defined in amended claim 3 and the elected subspecies defined in new claim 47.

Applicant further elects the subspecies for the activation force defined in original claim 14 (as dependent upon claim 2) as comprising electrical energy. This subspecies is defined in new claim 48. Applicant has amended original claim 14 to be dependent solely upon amended claim 2 and to define the non-elected subspecies. Claim 14 as amended has been withdrawn subject to reinstatement upon allowance of claim 2, which is believed to be generic to the non-elected subspecies defined in claim 14 and the elected subspecies defined in new claim 48.

Claims 15; 16; 19; 26 to 28; and 30 to 46 and have been canceled to simplify and expedite prosecution.

Claims 2; 12; 24; 25; 29; 47; and 48 remain in the application. Among these, claim 2 is the sole independent apparatus claim. Claim 29 is a dependent claim dependent upon amended claim 2. Claims 2; 12; 24; 25; 29; 47; and 48 read on the species/subspecies that remain for prosecution after amendment and cancellation of the claims described above. Claims 3; 11; and 14 stand withdrawn, subject to reinstatement upon allowance of a generic claim. Applicant believes claim 2 is generic to all the species and subspecies remaining.

Respectfully Submitted,

By 
Daniel D. Ryan, Reg. No. 29,243

RYAN KROMHOLZ & MANION, S.C.
Post Office Box 26618
Milwaukee, Wisconsin 53226
(262) 783 - 1300
20 March 2007
Customer No.: 58633